



United States Department of the Interior

NATIONAL PARK SERVICE
Southeast Utah Group
Arches and Canyonlands National Parks
Hovenweep and Natural Bridges National Monuments
2282 S. West Resource Boulevard
Moab, Utah 84532-3298

IN REPLY REFER TO:

September 12, 2008

Memorandum

To: Files

From: Superintendent, Southeast Utah Group

Subject: Determination regarding continuing the prohibition of use of any off-highway vehicle (OHV), all terrain vehicle (ATV), or similar vehicle on park roads

For many years, the use of motor vehicles “off-road” within national parks has been prohibited by 36 CFR 4.10. 36 CFR 4.10(a) prohibits motor vehicle use except on park roads, in parking areas, and on routes and designated areas. 36 CFR 4.10(b) requires that route and area designations be made only by special regulation and that they be made only in national recreation areas, national seashores, national lakeshores and national preserves. This precludes making such designations within national parks and monuments.

In Utah, ATV, OHV, and similar vehicle use on roads within NPS areas has been prohibited by action of 36 CFR 4.2, which assimilates Utah law related to motor vehicles. Utah law has generally prohibited the use of ATV, OHV, and similar vehicles on roads. Thus, such vehicles were prohibited both off-road and on-road within national parks in Utah.

During the 2008 General Session of the Utah legislature, S.B. 181 was passed. The new law becomes effective on October 1, 2008. The bill alters the previous state law regarding the operation of ATV, OHV, and similar vehicles on roads, so that those vehicles could operate on many roads in Utah, including within NPS areas.

In effect, this alteration of state law could terminate the longstanding closure of park roads to ATVs and introduce a new use into the parks and monuments.

NPS Management Policies require that park superintendents monitor new or changing patterns of use and assess their potential impacts on park resources. A new park use may not be allowed until the superintendent has made a determination that it will be appropriate and not cause unacceptable impacts. ATV, OHV, and similar vehicle use on roads is a potential new use within NPS areas in Utah, and must be evaluated and determined to be appropriate prior to being allowed.

The NPS Management Policies 2006 contain a discussion of applicable laws:

“The 1916 Organic Act directs the Service to conserve park resources “unimpaired” for the enjoyment of future generations. The 1970 National Park System General Authorities Act, as amended in 1978, prohibits the Service from allowing any activities that would cause derogation of the values and purposes for which the parks have been established. Taken together, these two laws establish for NPS managers a strict mandate to protect park resources and values; a responsibility to actively manage all park uses; and when necessary, an obligation to regulate their amount, kind, time and place in such a way that future generations can enjoy, learn, and be inspired by park resources and values and appreciate their national significance in as good or better condition than the generation that preceded them.” (Management Policies 2006, 8.1)

“The fundamental purpose of the national park system, established by the Organic Act and reaffirmed by the General Authorities Act, as amended, begins with a mandate to conserve park resources and values. This mandate is independent of the separate prohibition on impairment and applies all the time with respect to all park resources and values, even when there is not risk that any park resources or values may be impaired. NPS managers must always seek ways to avoid, or to minimize to the greatest extent practicable, adverse impacts on park resources and values.” (Management Policies 2006, 1.4.3)

“Congress, recognizing that the enjoyment by future generations of the national parks can be ensured only if the superb quality of park resources and values is left unimpaired, has provided that when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant.” (Management Policies 2006, 1.4.3)

The Management Policies, reflecting applicable laws, go on to discuss what constitutes appropriate park use.

“Appropriate forms of visitor enjoyment emphasize appropriate recreation consistent with the protection of the park.” (Management Policies 2006, 8.1.1)

“However, many forms of recreation enjoyed by the public do not require a national park setting and are more appropriate to other venues. The Service will therefore

- Provide opportunities for forms of enjoyment that are uniquely suited and appropriate to the superlative natural and cultural resources found in the parks;
- Defer to local, state, tribal, and other federal agencies; private industry; and nongovernmental organizations to meet the broader spectrum of recreational needs and demands.

To provide for enjoyment of the parks, the National Park Service will encourage visitor activities that

- Are appropriate to the purpose for which the park was established; and
- Are inspirational, educational, or healthful, and otherwise appropriate to the park environment; and

- Will foster an understanding of and appreciation for park resources and values, or will promote enjoyment through a direct association with, interaction with, or relation to park resources; and
- Can be sustained without causing unacceptable impacts to park resources or values.” (Management Policies 2006, 8.1.2)

In addition to the laws applicable to NPS areas nationwide, the following specific legislation is applicable to these NPS areas.

Canyonlands National Park was established to preserve an area possessing superlative scenic, scientific, and archeological features for the inspiration, benefit, and use of the public. (P.L. 88-590 as amended)

Arches National Park was established to protect extraordinary examples of wind erosion because of their educational and scenic value. (Proclamation No. 1875 of April 12, 1929)

Hovenweep National Monument was established to serve the public good by reserving prehistoric remains with as much land as necessary for their proper protection. (Presidential Proclamation 1654 42 Stat. 2299)

Natural Bridges National Monument was established to protect natural bridges, prehistoric ruins and prehistoric cave springs with as much land as necessary for their protection. (Presidential Proclamations 804, 35 Statute 2183; 881, 36 Statute 2502; 3486, 76 Statute 1495)

The existing plans for these units reflect the value of undisturbed soils and vegetation to park resources, and emphasize the need to protect them from damage, particularly because vegetation and soils in disturbed sites are slow to, or do not, recover. For instance, Arches National Park’s Natural Resource Management Plan describes management objectives which include:

“Manage developed areas for intensive use, but with minimal impacts on the environment.

Provide for public use and enjoyment of the backcountry lands while minimizing the environmental impacts of use and preserving primitive character, natural resources and ecological processes.

Protect and perpetuate unique plant species and communities...

Restore to natural condition Park lands and vegetation altered by uncontrolled human activity.”

The adverse impacts of motor vehicle use off of roads have long been a grave concern in NPS areas.

As a result, motor vehicle use off of roads is prohibited in national parks and monuments nationwide in order to protect the natural and cultural resources, and the scenic, scientific, and archeological features of national parks. This is because motor vehicles travelling off of roads disturb the soil and damage vegetation, which leads to soil erosion; damage archeological resources, directly by crushing or as a result of soil erosion induced by such travel; damage and destroy vegetation, which can adversely affect wildlife habitat, and can adversely affect the scenic quality

of the natural landscape. Research has shown that, once such damage has occurred, it is very difficult or impossible to repair.

The addition of off-road vehicle traffic on park roads will inevitably result in injury and damage to park resources. These specialized vehicles are designed, produced and marketed for the purpose of off-road travel, and they are uniquely capable of easily leaving the road and travelling cross-country. No reasonable level of law enforcement presence would be sufficient to prevent ATV and OHV use off roads. Park rangers will have no ability to pursue and apprehend vehicle users off-road without adding to the damage they cause to park resources.

Visitor education and civic engagement could reduce the potential for off-road use of these specialized motor vehicles, but could not preclude it. The potential for substantial damage is great, even from a small number of off-road incidents, and is an unacceptable risk.

Fencing park roads could physically prevent off-road vehicle use. However, in addition to being unrealistic due to expense, fencing roads would be contrary to NPS Policies, as it would have unacceptable impacts on natural and cultural resources, on scenery, and on visitor enjoyment. NPS Park Road Standards state that “A park road should be fundamentally designed to maintain an overall continuing sense of intimacy with the countryside or area through which it passes.” NPS Management Policies (2006) address the integration of facilities into the park environment at 9.1.1.2: “Development will not compete with or dominate park features or interfere with natural processes, such as the seasonal migration of wildlife or hydrologic activity associated with wetlands”. Fencing park roads would be inconsistent with NPS purposes and policies; therefore it is not an acceptable alternative.

The use of ATV, OHV, and similar vehicles does not require a park setting. Public lands are currently open to their use on and off roads, so the opportunity for this recreational use is available in other venues. There has been virtually no public demand for their use within the parks and monuments.

Determination:

The use on park roads of off highway vehicles (OHVs), all terrain vehicles (ATVs), and other motorized conveyances manufactured for recreational non-highway, off road, or all terrain travel poses a significant risk to park resources and values which cannot be appropriately mitigated, and which cannot be sustained without causing unacceptable impacts. The use of such vehicles is, therefore, not consistent with the protection of the parks and monuments.

A clear purpose of such vehicles is to travel off-road. Their capability to readily do so, the resource damage caused by off-road travel, and the lack of effective mitigation measures make their use inappropriate in these national parks and monuments. Prevention of resource damage by off-road vehicle travel is essential, because once resources have been damaged it is difficult, if not impossible, to provide effective restoration.

Title 36 CFR 1.5 provides for the closure of park areas to specific uses or activities when the superintendent determines that a closure is necessary for park purposes. In cases where the closure does not alter the public use pattern of the park area, does not adversely affect park resources, and is

not highly controversial, the superintendent may establish the closure through writing a determination and notifying the public.

In emergency situations, even in cases where the closure would alter the public use pattern of the park area, would adversely affect park resources, or would be highly controversial, the closure may be implemented if necessary for park purposes without prior publication as a rulemaking and without preparation of a written determination prior to the action.

OHVs, ATVs, and similar vehicles have long been prohibited within these parks and monuments by assimilation of state law. Maintaining that prohibition by application of 36 CFR 1.5 would not constitute an alteration of a public use pattern of the parks or monuments. Maintaining the current prohibition would not adversely affect park or monument resources. It would not be controversial, since it would not be a change and because the public clearly accepts the current restriction. On the other hand, terminating the prohibition would be controversial, would constitute an alteration of a public use pattern, and would adversely affect park resources.

In accordance with the provisions of 36 CFR 1.5, and the requirements of the National Park Service Management Policies (2006) Section 1.5, it is my professional judgment that for the protection of environmental and scenic values, for the protection of natural and cultural resources, and for the implementation of management responsibilities, it is necessary to continue the current prohibition against the operation of any off highway vehicle (OHV), all terrain vehicle (ATV) or other motorized conveyance manufactured for recreational non-highway, off road, or all terrain travel (all-terrain type I or type II vehicles, as defined by Utah State Code Annotated 41-22-2) on park roads within Arches National Park, Canyonlands National Park, Hovenweep National Monument, and Natural Bridges National Monument.

Public notice of this determination will be made in accordance with the provisions of 36 CFR 1.7 (a). As required by 36 CFR 1.7 (b), this closure shall be added to the park compendium, and made available to the public upon request. A file of relevant documents considered in making this determination will also be made available to the public upon request.

This action does not preclude consideration of proposals for the use of ATV, OHV, and similar vehicles on park roads. If proposals are made to allow such vehicles on park roads, they would be considered according to the process described in the National Park Service Management Policies (2006) at 8.1.2.

A handwritten signature in cursive script, reading "Kate Cannon". The signature is written in dark ink on a white background.